IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6704 OF 2004

Suresh Krishnarao Dhandale ...Petitioner

Versus

Madhukar Krishnaji Kalekar & Anr. ...Respondents

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Mr.Vishal Ghosalkar for Petitioner.

None for Respondents.

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CORAM: A.M.KHANWILKAR, J.

AUGUST 17, 2004.

P.C.

1. Heard Counsel for the Petitioner. I find no reason to interfere in exercise of writ jurisdiction in the fact situation of the present case.

2. It is seen from the record that 90 days period was to expire on 7th January 2004. No written statement was filed till then. In that backdrop, the Trial Court proceeded to pass no

written statement order on that date. Later on, Petitioner made application for setting aside no written statement order. But the reason mentioned in the application for his inability to file written statement within the statutory period is that the Petitioner was out of station on the relevant date i.e. 7th January 2004. It is not the Petitioner's case that the written statement was ready on 7th January 2004 and could not be filed. Moreover, the application came to be filed by the Petitioner only on 10th February 2004. There is no explanation forthcoming as to what prevented the Petitioner to file the written statement within 90 days, nor sufficient cause has been shown as to why the said application was not filed immediately after 7th January 2004 along with the written statement. It is not in dispute that the written statement was not presented nor kept ready to be tendered along with the subject application. If it is so, no fault can be found with the view taken by the Court below that no sufficient cause has been made out.

3. Although this Court has now finally

answered the issue that the Court has discretion to take on record written statement filed beyond 90 days. As mentioned earlier, in the present case, no discretion can be exercised in favour of the Petitioner, having failed to make out any sufficient cause.

4. Request is made on behalf of the Petitioner that the Petitioner be given an opportunity to file fresh application before the Trial Court giving all necessary particulars as to what prevented the Petitioner to comply with the statutory requirement. It is not possible to accede to this request, as the Petitioner has availed of the remedy available to him by filing subject application. The Petitioner ought to have given all necessary particulars so as to establish that there was sufficient cause for not filing written statement in time. Hence, dismissed.

A.M.KHANWILKAR, J.